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OFFICE OF PETITIONS

In re Patent No. 6,870,284	:	
Shinji Uchida	:	DECISION ON
Issue Date: March 22, 2005	:	PATENT TERM ADJUSTMENT
Application No. 10/079,846	:	AND NOTICE OF INTENT
Filed: February 22, 2002	:	TO ISSUE
Attorney Docket No. 00862.022569	:	CERTIFICATE OF CORRECTION

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(d)", filed May 17, 2005. Patentee requests that the patent term adjustment indicated on the patent be corrected from two hundred nineteen (219) to three hundred thirty-nine (339) days.

The request for reconsideration of the patent term adjustment indicated on the patent is **GRANTED**.

The patent term adjustment indicated on the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **three hundred thirty-nine (339) days**.

On October 20, 2003, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date was zero (0) days. On May 17, 2005, the above-identified application matured into U.S. Patent No. 6,870,284. The patent issued with a Patent Term Adjustment of two hundred nineteen (219) days. The instant request for reconsideration filed May 17, 2005, was timely filed within two months of the date the patent issued. See § 1.705(d).

Patentee states that the patent is not subject to a terminal disclaimer.

The Office determined a patent term adjustment of two hundred nineteen (219) days based on an adjustment for PTO delay of three hundred thirty-nine (339) days pursuant to 35 U.S.C. 154(b)(1)(A)(iv) and 37 C.F.R. §1.703(a)(6), reduced by applicant's delay of one hundred twenty (120) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. §1.704(c)(10). The PTO delay is not contested. The adjustment of 120 days is at issue.

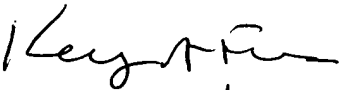
The adjustment of 120 days has been found to be incorrect. In this application, a Notice of Allowability was mailed on October 20, 2003. Applicant filed a "REQUEST FOR CORRECTED NOTICE OF ALLOWABILITY" on November 5, 2003, because the Notice was silent as to claim 30. By Official Gazette Notice dated June 26, 2001, the Director has advised applicants and patentees that the filing of certain papers after the mailing of a Notice of Allowance will not be considered a "failure to engage in reasonable efforts" to conclude processing or examination of an application and will not result in reduction of a patent term adjustment pursuant to 37 C.F.R. §1.704(c)(10). See Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance, 1247 OG 111 (June 26, 2001). A response to the examiner's reasons for allowance is specified as being a paper that is not considered to be "failure to engage". In this situation, it is concluded that the "REQUEST FOR CORRECTED NOTICE OF ALLOWABILITY" is analogous to a response to the examiner's reasons for allowance, and accordingly no reduction in PTA is warranted.

In view thereof, the correct determination of PTA at the time of issuance is three hundred thirty-nine (339) days.

Receipt of the \$200.00 fee set forth in 37 C.F.R. §1.18(e) is acknowledged.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify the error regarding the patent term information. See 35 U.S.C. §254 and 37 C.F.R. §1.322. The certificate of correction will indicate that the term of the above-identified patent is extended or adjusted by **three hundred thirty-nine (339) days** subject to any disclaimers.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.


Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enc: draft Certificate of Correction (1 page)